

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-71/51864

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 2, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Wood County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on January 23, 2002, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the Community Spouse Resource Allowance (CSRA) must be increased to bring the community spouse's monthly income up to the Minimum Monthly Maintenance Needs Allowance (MMMNA).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Christine Neinast, ESS  
Wood County Dept Of Social Services  
400 Market Street  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Joseph A. Nowick  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Wood County.
2. The petitioner has been a resident of a skilled nursing facility since October 1, 2001. On November 21, 2001, the petitioner applied for institutional MA backdated to October 1, 2001.
3. As of November, 2001, the community spouse received \$230 per month in Social Security. The petitioner's monthly income was \$542. In November, 2001, the petitioner and his wife had assets of about \$193,390. At the time of application, the petitioner and his wife had assets of about \$193,791. Investment income totaled \$624.
4. On December 12, 2001, the county agency notified the petitioner that he was ineligible for MA. The basis of the denial was that the household had excess assets. The county agency determined that the maximum assets for eligibility would be \$89,000.

## **DISCUSSION**

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. §49.455(4)(a).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. See the MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$89,000. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As an exception to this general rule, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case is \$1,935. MA Handbook, Appendix 23.6.0 (5-01-01). (The excess shelter allowance does not apply in this case.)

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, in this case, that has no impact, as the total income for both spouses was \$772, which is way below the MMMNA. Even with all of the investment income, the couple would not reach the MMMNA.

The result in this case is as follows. As of October 1, 2001, the date when the petitioner seeks coverage to begin, assets totaled \$193,791. Monthly income from the assets totaled about \$624. Including the petitioner's income, the total income available to the community spouse would be about \$1,396. Therefore all assets, plus and of Mr. x's income could be reallocated to the petitioner. Obviously, the petitioner's cost share would be \$0.

### **CONCLUSIONS OF LAW**

All of the non-exempt assets of petitioner and his wife must be allocated to his wife to maximize her monthly income.

**NOW, THEREFORE, it is** **ORDERED**

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$193,791, and to determine petitioner's MA eligibility retroactive to October 1, 2001, based upon the new community spouse asset allocation. The county shall do so within 10 days of this decision.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 6th day of  
February, 2002.

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/s Joseph A. Nowick  
Administrative Law Judge  
Division of Hearings and Appeals  
41/JAN